

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions **45-003-13-1-5-00209-16**
 45-003-14-1-5-01202-16
 45-003-16-1-5-00520-17
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-08-18-304-016.000-003**
Assessment Years: **2013, 2014 and 2016**

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2014 appeal with the PTABOA. The PTABOA issued notice of its final determination on April 12, 2016. On May 27, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 23, 2017. On May 8, 2017, Petitioner filed a Form 131 with the Board.
4. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
5. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on January 8, 2018. Neither the ALJ nor the Board inspected the property.
6. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.¹

¹ Gordona Bauhan, Lake County Hearing Officer, was present but did not testify.

Facts

- 7. The subject property is a vacant residential lot located at 4442 W. 26th Place in Gary.
- 8. For 2013 and 2014, the property was assessed at \$3,200. For 2016, the property was assessed at \$3,000.
- 9. Petitioner requested an assessed value of \$1,700 for each year.

Record

- 10. The official record contains the following:
 - a. A digital recording of the hearing.

b. Exhibits:

Petitioner presented no exhibits.

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| Respondent Exhibit 1: | Property record card (“PRC”) for the subject property, |
| Respondent Exhibit 2: | Real property maintenance report, |
| Respondent Exhibit 3: | Comparable sales spreadsheet, |
| Board Exhibit A: | Form 131 petitions and attachments, |
| Board Exhibit B: | Notices of hearing, |
| Board Exhibit C: | Hearing sign-in sheet, |

c. These Findings and Conclusions.

Burden

- 11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
- 12. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).

13. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013. Petitioner did not appeal the 2015 assessed value and the assessed value decreased from 2015 to 2016. Petitioner, therefore, has the burden of proof for 2016.

Summary of Contentions

16. Petitioner’s case:
 - a. Petitioner acquired the property in 2009 for \$113 at auction. He claims Respondent has it assessed for approximately 30 times the purchase price. *Nowacki testimony.*
 - b. Petitioner contends that 4030 W. 22nd Place is the only relevant sale on Respondent’s spreadsheet. It is comparable to the subject property in location, size, and date. The adjusted sale price is \$1,500 for a property that is slightly smaller than the subject property. This sale reconciles with his requested value of \$1,700. *Nowacki testimony; Resp’t Ex. 3.*
 - c. Petitioner argues that Respondent’s sales are from all over the city. Petitioner claims the sales in Miller and Glen Park are very distant from the subject property’s neighborhood where 95% to 100% of the properties are sold at tax sales. Petitioner contends that if Respondent is going to take an average of sales, he should take into consideration what people are actually paying for them. Further, the limited number of sales for an entire city indicates there is little market activity therein. *Nowacki testimony; Resp’t Ex. 3.*
 - d. Petitioner is requesting an accurate assessment for 2013 so he can obtain accurate assessments for subsequent years. *Nowacki testimony.*
17. Respondent’s case:

- a. Respondent has submitted evidence regarding sales of vacant land. Based on those sales, the median price per square foot is \$.47, which results in an assessed value for the subject property of approximately \$3,300. Respondent claims that this is consistent with the assessed values. *James testimony; Resp't Ex. 3.*
- b. Respondent contends that Petitioner purchased the property in 2009 and that a sale in 2009 would not be used for a 2013 assessment. He also argues multiple sales were used to develop a median price and that one sale does not define a market. *James testimony.*

ANALYSIS

18. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 and the 2014 assessments at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner purchased the property at auction for \$113. Petitioner contends that 95% to 100% of the sales in the subject neighborhood are sold at tax auctions. He did not present any documentation to substantiate the purchase price or the date of the sale, nor did he claim that the purchase price should be equal to the assessed values. He also failed to present any evidence to support his assertion that the majority of properties in the subject neighborhood are sold at tax sales. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in

making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Petitioner contends the property should be assessed at \$1,700 for each year at issue. He claims that value is supported by one sale included in Respondent's exhibits. He generally attempted to compare the sale property to the subject property in terms of location and size, but did not explain how any differences may affect the values. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Additionally, one sale is generally insufficient to establish market value.
- e. Petitioner complains that the 2013 petition is five years old. But, pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to appeal directly to the Board if the petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to the Petitioner's own inaction.
- f. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- g. Petitioner failed to make a prima facie case for 2013. Because the 2014 assessed value did not increase, the burden-shifting provisions did not apply and he had the burden for that year as well and similarly failed to meet it. He also had the burden of proof for 2016 and once again failed to meet it.

CONCLUSION

- 19. Petitioner failed to establish a prima facie case for any of the years at issue. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013, 2014, and 2016 assessed values should not be changed.

ISSUED: March 21, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.